

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

- - -

CARRADINE CHIROPRACTIC CENTER,	)	
INC. individually, and as the	)	
representatives of a class of	)	
similarly-situated persons,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Case No.
	)	4:15-cv-2378-BYP
POSTURE PRO, INC., and JOHN	)	
DOES 1-10,	)	
	)	
Defendants.	)	
-----	)	

DEPOSITION OF

DENISE PAUCK

MARCH 24, 2016

888 SOUTH FIGUEROA STREET, SUITE 840  
LOS ANGELES, CALIFORNIA 90017

1 A. Yes.

2 Q. And you are the person that has been designated  
3 by Posture Pro to do so; correct?

4 A. Correct.

5 Q. Okay. And there's one topic that we requested  
6 Posture Pro produce a representative to talk about. Let  
7 me just read that topic into the record. "Posture Pro,  
8 Inc.'s knowledge, familiarity and/or confusion relative  
9 to the federal statute and regulations pertaining to  
10 facsimile advertisements."

11 Do you see that?

12 A. On this form here that you gave me?

13 Q. Correct. Yes.

14 A. Yes.

15 Q. And do you believe that you are -- I'm sorry, I  
16 interrupted you. Are you okay?

17 A. Yeah.

18 Q. And do you believe you are capable of addressing  
19 all of the issues with regard to that topic?

20 A. To the best of my ability, yes.

21 Q. Okay. Why don't you tell me a little bit about  
22 yourself. And let's start with where you work.

23 A. I work at Posture Pro in Huntington Beach,  
24 California. I've been there since the inception of the  
25 company. My role --

1 to know those legal regulations?

2 A. No. She never sent any faxes out.

3 Q. How about Lisa Scopelleti? Would she have had  
4 any reason to know those legal requirements and  
5 regulations?

6 A. No.

7 Q. Would you agree that you are the person who would  
8 be most familiar with the legal regulations or  
9 requirements that pertain to fax advertising?

10 A. Yes.

11 Q. Is there anyone, other than you, at Posture Pro  
12 that would have any information about that?

13 A. Not that I could think of.

14 Q. Okay. And why don't you tell me briefly what you  
15 know about the legal regulations and requirements in  
16 regard to fax advertisements.

17 A. What I know is that we were sending faxes out to  
18 solicited clients, the ones that had given us their fax  
19 numbers, the ones that we had been doing business with  
20 and had willingly consented and given us their fax  
21 numbers. We did not send out unsolicited fax numbers --  
22 or unsolicited faxes.

23 Q. Okay. I think I understand. Have you ever heard  
24 of a law called the Telephone Consumer Protection Act?

25 A. Yes.

1 Q. When do you think you first became aware of that  
2 law?

3 A. I can't recall exactly. It was several years  
4 ago.

5 Q. Have you ever heard of a law called the Junk Fax  
6 Prevention Act?

7 A. Yes.

8 Q. When do you believe you first heard of that?

9 A. It was probably the same time. It was probably  
10 several years ago.

11 Q. What was the occasion for you to learn about the  
12 Telephone Consumer Protection Act or the Junk Fax  
13 Protection Act?

14 A. Well, when we were beginning to send our faxes  
15 out, we were sending solicited faxes. And we were very  
16 careful to not send unsolicited faxes out. So we were  
17 very careful about that. And we had our opt-out  
18 notices, from what we thought was correct, on the top  
19 and the bottom identifying ourselves. We're very  
20 careful to not send unsolicited faxes.

21 Q. Why were you so careful?

22 A. Because we heard of the unsolicited law. And we  
23 did not want to get in that.

24 Q. Okay. I guess I need you to explain that a  
25 little bit. Where did you hear about this rule with

1 we're a small company. We do not want to make any  
2 mistakes. We're very cautious.

3 Q. Okay. I understand. Do you think you've ever  
4 personally read the Telephone Consumer Protection Act or  
5 the Junk Fax Prevention Act?

6 A. Various parts of it. It's very confusing.

7 Q. When do you think you had first done that?

8 A. Well, back then I probably went through some of  
9 it just -- but I can't recall. It was so long ago. I  
10 mean, it's all those legal terms, which is, you know,  
11 very very confusing.

12 Q. Okay. Maybe we should get clear on a couple of  
13 those legal terms. You used the term "solicited fax"  
14 and "unsolicited fax." Can you just explain to me what  
15 you mean by those.

16 A. What I mean by them --

17 Q. Right.

18 A. -- is that the faxes that we sent to were clients  
19 that were customers of our database, where we had a  
20 relationship with them and they willingly gave us their  
21 fax number. And that is all we sent faxes to. End of  
22 story.

23 Q. Okay. So the people who had willingly given you  
24 their number, that you had a relationship to, that -- if  
25 you sent that person a fax, you understand that to be a

1 solicited fax?

2 A. That is correct.

3 Q. Okay. So an unsolicited fax -- I just want to  
4 make sure I understand how you use these terms -- that  
5 would just be to somebody with whom Posture Pro has no  
6 relationship at all?

7 A. That we weren't doing business with, right.

8 Q. Got it. Okay. Do you believe you've ever had  
9 any reason to review any of the regulations that the  
10 Federal Communications Commission has published with  
11 regard to fax advertising?

12 A. Can you restate that?

13 Q. Sure. Do you think you've ever read or been  
14 familiar with, in any way, any of the regulations that  
15 the FCC has issued with regard to fax advertising?

16 A. I think over the years I have looked at them and  
17 seen some of the stuff. But it didn't pertain to us.  
18 Because it always said unsolicited. We didn't fall in  
19 that category.

20 Q. Got it. Okay. Well, let me ask you a few  
21 specific questions about some of those regulations. And  
22 you just tell me if it's something that's familiar to  
23 you, if it's not familiar to you or if you think it's  
24 something that you've seen before. Okay?

25 A. Okay.

1 what you're giving me. So I can't answer that. I don't  
2 even know what's in front of me here. Do you want to  
3 give me an opportunity to look at it or not?

4 Q. Absolutely. Go ahead.

5 A. I don't recall either one of these in  
6 specificity.

7 Q. Okay. And just so we're clear on the record,  
8 when you say either one of these, you're referring to  
9 both Exhibit 8 and Exhibit 9?

10 A. Right.

11 Q. Okay. Exhibit 9 for the record is 70 FR 75070.  
12 It's a regulation issued by the FCC pertaining to fax  
13 advertising in December of 2005.

14 A. I never saw this.

15 Q. Okay. You had mentioned earlier that you may  
16 have looked up fax advertising on the Internet. I  
17 should have asked you a few questions about that. So  
18 let me do that now.

19 Were you doing that for the purpose of  
20 understanding the legal requirements relative to it, how  
21 to do it, who you could hire to do it for you?

22 A. No. Never who to do it for. We sent out our own  
23 faxes to a very small database. We're a very small  
24 company. Again, we're very very cautious. Getting the  
25 advice. But I too was researching things because of the

1 whole thing that's going on with the junk fax deal. It  
2 was always related to unsolicited junk fax. We never  
3 did that. So this is just very confusing. I don't get  
4 it. I don't know how we fit into the unsolicited fax  
5 thing at all. I just don't know how.

6 Q. Okay. When you were researching this on the  
7 Internet, were you just reading, like, articles about it  
8 or were you trying to find the actual laws and stuff?

9 A. Both.

10 Q. Okay. Do you think you actually read any laws?  
11 Do you think you actually read any regulations?

12 A. I think just by going over what I was reading, it  
13 always pertained to unsolicited junk fax. And we didn't  
14 fall into that category. So we didn't fall into that.

15 Q. Okay. I think I understand. Does the term --  
16 and I'll refer you to Exhibit 8 once again. Does the  
17 term "established business relationship" -- does that  
18 mean anything to you? And just to orient you, in the  
19 summary paragraph of Exhibit 8, the first sentence says,  
20 "In this document the commission temporarily states the  
21 limitations imposed in 64.1200(f)(3) pm tje duration of  
22 an established business relationship."

23 Does that term "established business  
24 relationship" mean anything to you?

25 A. Well, yeah. It means that they've done business



1           Let's identify them first for the record.  
2 Exhibit 10 is 21 FCC Rcd 3787. It's a regulation issued  
3 by the FCC that pertains to fax advertisements in April  
4 of 2006. And Exhibit 11 is 71 FR 25967. It's a federal  
5 regulation pertaining to fax advertising, issued by the  
6 FCC on May 3rd of 2006. A few questions about that.

7           First, do you think you've ever had any reason to  
8 read either of these regulations before?

9           A. I have to read it to tell you if I've read it. I  
10 don't know.

11          Q. That's fine.

12          A. It was years ago. I don't recall reading this,  
13 again, specifically.

14          Q. Okay. These regulations were issued in 2006. Do  
15 you believe that Posture Pro was sending out any fax  
16 advertisements in 2006?

17          A. I don't think we were sending them out in 2006.  
18 I'm not sure. That was ten years ago. I don't think  
19 so. But I'm not exactly sure if it was ten years ago or  
20 not, without a journal.

21          Q. Okay. What's the journal?

22          A. I mean, without looking at things. I can't  
23 recall right now off the top of my head if we were  
24 sending them out in 2006 or not, to be honest.

25          Q. Okay. Would there be some way for Posture Pro to

1 received advice, on the top and the bottom. We had that  
2 on there as it pertained to solicited faxes. What  
3 pertains to the unsolicited faxes, we did not feel we  
4 fell into that. So we -- we're very cautious to not  
5 send unsolicited faxes out. We don't feel that there  
6 was any wrongdoing with the junk fax. We didn't do  
7 that.

8 Q. Okay. Is there anything about the regulations  
9 that pertain specifically to solicited faxes that you  
10 found to be confusing?

11 A. Yeah. Because this is what we have. And you're  
12 telling us that this is incorrect. So yeah, I'm totally  
13 confused. I'm confused to this moment. I don't even  
14 know why I'm here. I'm that confused right now.

15 Q. Fair enough. I think that's the right place to  
16 end. Thank you very much for your time, Ms. Pauck.

17 A. Thank you.

18 MR. STUBBS: Thank you Tim.

19 MR. NEUFELD: Thank you.

20 (Plaintiff's Exhibits 1 through 16 were  
21 marked for identification by the Reporter and  
22 are attached hereto.)

23 (Whereupon, the proceedings concluded  
24 at the hour of 2:19 p.m.)  
25